



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R03-OAR-2020-0198; FRL 10010-71-Region 3]**

# **Air Plan Approval; West Virginia; 1997 8-Hour Ozone Standard Second Maintenance Plan for the West Virginia Portion of the Wheeling, WV-OH Area Comprising Marshall and Ohio Counties**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of West Virginia. This revision pertains to the West Virginia Department of Environmental Protection's (WVDEP) plan for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the West Virginia portion of the Wheeling, WV-OH area (Wheeling Area), comprising Marshall and Ohio Counties). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0198 at <https://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or



other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2036. Mr. Becoat can also be reached via electronic mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** On December 10, 2019, WVDEP submitted a revision to the West Virginia SIP to incorporate a plan for maintaining the 1997 ozone NAAQS through June 14, 2027, in accordance with CAA section 175A.<sup>1</sup>

## **I. Background**

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202

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<sup>1</sup> In its December 10, 2019 submittal, the State consistently refers to the Wheeling Area, rather than referring to the West Virginia portion of the Wheeling, WV-OH area. While the state's terminology is technically incorrect, it is clear that what the State refers to as the Wheeling Area is identical to the West Virginia portion of the Wheeling, WV-OH area designated by EPA pursuant to the 1997 8-Hour ozone NAAQS. See 40 CFR 81.349.



(February 8, 1979). On July 18, 1997 (62 FR 38856),<sup>2</sup> EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004 (69 FR 23858), EPA designated Wheeling Area, West Virginia-Ohio (WV-OH), as nonattainment for the 1997 8-hr ozone NAAQS. The Wheeling Area, WV-OH nonattainment area consists of Marshall and Ohio Counties, WV and Belmont County, OH.

Once a nonattainment area has three years of complete, certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),<sup>3</sup> the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as “maintenance areas.” One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On May 15, 2007 (72 FR 27247, effective June 14, 2007), EPA approved a redesignation

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<sup>2</sup> In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

<sup>3</sup> The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.



request (and maintenance plan) from WVDEP for the Wheeling Area. In accordance with section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.*, maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).<sup>4</sup> However, in *South Coast Air Quality Management District v. EPA*<sup>5</sup> (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for "orphan maintenance areas," (*i.e.*, areas like Marshall and Ohio Counties) that had been redesignated to attainment for the 1997 NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these "orphan maintenance areas" under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: 1) an attainment emissions inventory; 2) a maintenance demonstration; 3) a commitment for continued air quality monitoring; 4) a process for verification of continued attainment; and 5) a contingency plan. The Calcagni memo<sup>6</sup> provides

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<sup>4</sup> See 80 FR 12315 (March 6, 2015).

<sup>5</sup> 882 F.3d 1138 (D.C. Cir. 2018).

<sup>6</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).



that states may generally demonstrate maintenance by either performing air quality modeling to show the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.*, attainment year inventory). See Calcagni memo at 9. EPA further clarified in three subsequent guidance memos describing “limited maintenance plans” (LMPs)<sup>7</sup> that the requirements of CAA section 175A could be met by demonstrating that the area’s design value<sup>8</sup> was well below the NAAQS and that the historical stability of the area’s air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on December 10, 2019, WVDEP submitted a second maintenance plan LMP for the Wheeling Area, following EPA’s LMP guidance and demonstrating that the area will maintain the 1997 ozone NAAQS through June 14, 2027, *i.e.*, through the end of the 20-year maintenance period.

## **II. Summary of SIP Revision and EPA Analysis**

WVDEP’s December 10, 2019 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the Calcagni memo as follows.

### ***A. Attainment Emissions Inventory***

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<sup>7</sup> See “Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas” from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; “Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas” from Joseph Paisie, OAQPS, dated October 6, 1995; and “Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas” from Lydia Wegman, OAQPS, dated August 9, 2001.

<sup>8</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.



A state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA’s most recent guidance. For ozone, the inventory should be based on typical summer day’s emissions of oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Wheeling Area, WVDEP used 2004 for the attainment year inventory, because 2004 was one of the years in the 2002–2004 three-year period when the area first attained the 1997 8-hour ozone NAAQS. The Wheeling Area continued to monitor attainment of the 1997 8-hour ozone NAAQS in 2014. Therefore, the emissions inventory from 2014 represents emissions levels conducive to continued attainment (i.e., maintenance) of the NAAQS. Thus, WVDEP is using 2014 as representing attainment level emissions for its second maintenance plan. WVDEP used 2014 summer day emissions from EPA’s 2014 version 7.0 modeling platform as the basis for the 2014 inventory presented in Table 1.<sup>9</sup>

**Table 1: 2014 Typical Summer Day VOC and NO<sub>x</sub> Emissions (tons/day)<sup>10</sup>**

Area	Source Category	VOC	NO <sub>x</sub>
Marshall County, WV	Fire	0.5	0.0
	Nonpoint	19.1	3.2
	Nonroad	0.4	0.5
	Onroad	0.6	4.1
	Point	1.0	0.0
	<b>Subtotal</b>	<b>21.6</b>	<b>7.9</b>
Ohio County, WV	Fire	0.0	0.0
	Nonpoint	1.8	2.1
	Nonroad	1.0	0.3
	Onroad	1.7	1.0

<sup>9</sup> On April 22, 2020, WVDEP submitted a clarifying letter to EPA noting that the headings in Table 4 of its submittal were inadvertently titled, “2014 Summertime Daily NO<sub>x</sub> Emissions (tpd)” instead of “2014 Summertime Daily VOC Emissions (tpd).” EPA does not believe that this mislabeling negatively impacts proposed approval of this SIP revision.

<sup>10</sup> Data in Table 1 only includes tons/day. See Tables 3 and 4 of WVDEP’s December 10, 2019 submittal for data in tons/year.



	Point	0.1	24.4
	<b>Subtotal</b>	<b>4.7</b>	<b>27.9</b>
Belmont County, OH	Fire	0.0	0.0
	Nonpoint	6.2	0.6
	Nonroad	1.3	0.4
	Onroad	2.0	3.4
	Point	0.2	0.2
	<b>Subtotal</b>	<b>9.7</b>	<b>4.6</b>
	<b>Subtotal</b>	<b>9.7</b>	<b>4.6</b>
<b>Wheeling Area, WV-OH</b>	<b>Totals</b>	<b>35.9</b>	<b>40.4</b>

The 2014 emissions inventory was prepared by WVDEP and uploaded into EPA's Emissions Inventory System (EIS) for inclusion in EPA's National Emission Inventory (NEI). The inventory addresses four anthropogenic emission source categories: stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and on-road mobile sources. Point sources are stationary sources that have the potential to emit (PTE) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO<sub>x</sub>, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to WVDEP.

The fire emissions sector includes emissions from agricultural burning, prescribed fires, wildfires, and other types of fires. The nonpoint emissions sector includes emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, portable fuel containers, home heating, repair and refinishing operations, and crematories. The non-road emissions sector includes emissions from engines that are not primarily used to propel transportation equipment, such as generators, forklifts, and marine pleasure craft. The on-road emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The point source sector includes large industrial operations that are relatively few in number but have large emissions, such as kraft mills, electrical generating units, and pharmaceutical factories. On-road mobile



emissions are modelled by WVDEP using EPA's Motor Vehicle Emission Simulator (MOVES). WVDEP generates nonroad mobile source emissions data through use of EPA's NONROAD2014a model. EPA reviewed the supporting documentation submitted by WVDEP<sup>11</sup> and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).<sup>12</sup>

#### *B. Maintenance Demonstration*

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value, DV) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document, EPA believes that if the most recent DV for the area is well below the NAAQS (e.g. below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that Prevention of Significant Deterioration (PSD) requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating a stable or improving air quality trend, West Virginia

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<sup>11</sup> See Appendix C of WVDEP's December 10, 2019 submittal.

<sup>12</sup> The daily emissions data for 2014 typical summer day VOC and NOx emissions in Table 1 were excerpted from: [https://www.epa.gov/sites/production/files/2018-11/ozone\\_1997\\_naaqs\\_emiss\\_inv\\_data\\_nov\\_19\\_2018\\_0.xlsx](https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx) ("2014 2028 area emiss by sector" tab) posted at <https://www.epa.gov/ground-level-ozone-pollution/1997-ozonational-ambient-air-quality-standards-naaqs-nonattainment>.



used a weighted design value of the most recent five design values. The five most recent design values available cover the 2012-2018 ambient air monitoring data. This includes 3-year design values for 2012-2014, 2013-2015, 2014-2016, 2015-2017, and 2016-2018. Data from 2014, 2015, and 2016 was included in three out of five design values. Table 2 of this document shows the most recent five years of ambient ozone air quality 3-year design values. These design values are from EPA's Air Quality System (AQS). The 7th column is a calculated 5-year weighted design value calculated by West Virginia. This 5-year weighted design value was calculated by averaging all the 4th Max Ozone values from the years 2012-2018. The 8th column is the 5-year design value average calculated by EPA. The 5-year design value average is calculated by averaging the design values for 2012-2014, 2013-2015, 2014-2016, 2015-2017, and 2016-2018. The 5-year weighted design value calculated by West Virginia is 0.067 ppm, and the 5-year design value calculated by EPA is 0.066 pm, for the Wheeling Area, both of which are below the 0.071 ppm threshold level and 79% of the NAAQS. Table 2 shows that the most recent five years of ambient ozone air quality 3-year average DVs for the Wheeling Area continue to be below 85% of the 1997 ozone NAAQS. It demonstrates that 8-hour ozone air quality levels are significantly below the level of the standard.

**Table 2: Wheeling Area 8-hour ozone design values in part per million (ppm)**

Site	2012-2014	2013-2015	2014-2016	2015-2017	2016-2018	5-Year Weighted	5-Year Design Value Average (ppm)	Projected 2023
Wheeling, WV	0.067	0.066	0.068	0.067	0.066	0.067	0.066	0.060

For the 2023 projections shown in Table 2, EPA used a 2011-based air quality modeling platform, which includes emissions, meteorology, and other inputs for 2011 as the base year and



emissions for 2023 as the future analytic year base case. Specifically, the modeling platform included a variety of data that contained information pertaining to the modeling domain and simulation period. These include gridded, hourly emissions estimates and meteorological data, and boundary concentrations. Separate emissions inventories were prepared for the 2011 base year and the 2023 base case. All other inputs (i.e. meteorological fields, initial concentrations, and boundary concentrations) were specified for the 2011 base year model application and remained unchanged for the future-year model simulations. The 2011 modeling platform and projected 2023 emissions were used to drive the 2011 base year and 2023 future case air quality model simulations. The 2023 projected DV for the Wheeling Area is 0.060 ppm, well below the level of the 1997 8-hour ozone NAAQS, 0.08 ppm. Therefore, EPA proposes to determine that that future violations of the NAAQS in this area are unlikely.

### *C. Continued Air Quality Monitoring and Verification of Continued Attainment*

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the December 10, 2019 submittal, West Virginia committed to maintaining an appropriate air quality monitoring network, in accordance with 40 CFR part 58. West Virginia will continue to conduct ambient ozone air quality monitoring in the area throughout the term of the maintenance plan to verify continued attainment with the 1997 8-hour ozone NAAQS and to protect any applicable PSD increments. WVDEP states that air quality measurements will be performed in accordance with appropriate regulations and guidance documents along with EPA quality assurance requirements, and monitoring procedures will be determined in accordance with 40 CFR part 58. WVDEP commits to submitting quality-assured ozone data to EPA through the AQS and ultimately certified by the WVDEP. EPA has analyzed the commitments



in the plan and determined that they meet the requirements.

#### *D. Contingency Plan*

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA. WVDEP's December 10, 2019 submittal outlines its adopted permanent and Federally enforceable control measures in order to regulate emission growth. The Wheeling Area's control measures include the permitting regulations and PSD measures, which will remain in effect through the maintenance plan period. Air permits issued will incorporate applicable PSD, New Source Performance Standard, and National Emission Standards for Hazardous Air Pollutant requirements.

WVDEP's December 10, 2019 submittal included the required contingency plan, to be implemented in the event of NAAQS violations in the future. WVDEP has committed to adopting and implementing one or more of the following control measures within three months after verification of a monitored ozone standard violation in the Wheeling Area: 1) extend the applicability of the VOC reasonably available control technology (RACT) rule to include source



categories previously excluded (e.g., wastewater treatment facilities); 2) revise permitting requirements establishing more stringent emissions control measures and/or emissions offsets; 3) implement NO<sub>x</sub> RACT requirements if necessary; 4) develop regulations to establish plant-wide emission caps; 5) implement Stage II Vapor Recovery regulations; 6) establish a program focusing on increasing the public's understanding of air quality issues and increasing support for actions to improve the air quality; and 7) initiate voluntary local control measures (e.g., bicycle/pedestrian measures, engine idling reduction, partnership with ground freight industry, increase compliance with open burning restrictions, and school bus engine retrofit program).

If there is indeed a violation and the DV exceeds the NAAQS, the contingency plan will be “triggered,” based on the following schedule: 1) quality assurance procedures must confirm the monitored violation within 45 days of occurrence; 2) a draft rule would be developed by the WVDEP for any regulation chosen, 3) WVDEP will adopt the selected control measure(s) as emergency rule(s) which will be implemented within six months after adoption and will file the rule(s) as legislative rule(s) for permanent authorization by the legislature; and 4) for each voluntary measure selected, the WVDEP will initiate program development with local governments within the area by the start of the following ozone season.

Furthermore, if the triennial inventories indicate emissions growth in excess of 10% of the 2011 base-year inventory or if a monitored ozone air quality exceedance pattern indicates that an ozone NAAQS violation may be imminent, WVDEP will evaluate existing control measures to ascertain if additional regulatory revisions are necessary to maintain the ozone standards.

EPA finds that West Virginia's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A.



Importantly, while EPA notes that West Virginia's contingency measures option six (increasing public understanding) and seven (voluntary local control measures), are not enforceable measures that standing alone are likely to lead to reductions in emissions that could promptly correct a violation of the NAAQS, their inclusion among other measures that meet that criterion, is overall SIP-strengthening, and their inclusion does not alter EPA's proposal to find the LMP is fully approvable.

#### *E. Transportation Conformity*

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). An MVEB is defined as "that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101)."

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas,



certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 93.112) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113).

Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The Wheeling Area remains under the obligation to meet the applicable conformity requirements for the 1997 8-hour ozone NAAQS.

### **III. Proposed Action**

EPA's review of WVDEP's December 10, 2019 submittal indicates it meets CAA section 175A and all applicable CAA requirements. EPA is proposing to approve the LMP for the 1997 8-hour ozone NAAQS for the Wheeling Area (comprising Marshall and Ohio Counties), as a revision to the West Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those



imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and



- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to West Virginia's second maintenance plan for Marshall and Ohio Counties, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: June 17, 2020

Cosmo Servidio,  
Regional Administrator,  
Region III.

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